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Subject: Microsoft Settlement

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With regard to the revised proposed final judgement (PFJ) in the U.S. v. Microsoft case, I would like to submit these comments for consideration in further proceedings.

I am opposed to the agreement for several reasons. Specific examples follow, but generally, the agreement allows Microsoft to ignore or evade or delay any provision therin by proclamation. I remind the court, that Microsoft lost this case; that decision was upheld by the Court of Appeals; and the Supreme Court of the United States saw no reason to further review the case.

I am disappointed that structural remedies are no longer included in the PFJ. If we learn one thing from history, it would be that Microsoft is undeterred by the law, by the courts, and by any proposed penalty. In previous cases, Microsoft has been found guilty of similar monopolistic practices (See DR-DOS, Stacker). Microsoft may have lost these specific legal battles, but only after they had already won the war. Both competitors were illegally driven out of business before any court could offer relief.

This practice continues today. In other monopoly cases, monopolists are fined for ignoring regulations, the law, and judicial orders. In these cases, the fines are less burdensome than to comply. Ignoring the law, ignoring the courts, is simply an entry on the monopolist's balance sheet. It is simply part of the cost of doing business. An additional cost for the monopolist's customers, the public, to bear.

The effect is that if a monopolist becomes large enough, resourceful enough, then it can effectively ignore the court. This seems likely to happen in this case. Even if the provisions of the PFJ were effective -- which, in my opinion, they are not -- Microsoft could simply ignore them, prolong the inevitable legal formalities, and then simply pay whatever fines are imposed by the court. The behavior intended by the PFJ will have long since evaporated, if it ever existed at all.

With respect to the PFJ, there are several imperfections which should be addressed before any agreement is considered.

First, throughout the document, many definitions, examples, and conditions are specifically enumerated. This renders them ineffective. Microsoft, by proclamation, can ignore any such definition or condition by simply changing the name of the affected entity. If an "API" (Application Programming Interface) is renamed as an "APS" (Application Programming Specification), then a majority of the PFJ will be rendered useless with one stroke of Microsoft's pen.

"API" is used here simply as an example. Other enumerations, other acronyms, and other phrases are equally vulnerable to redefinition or obsolescence by Microsoft.

Too many of the provisions in the PFJ are conditioned upon agreement by Microsoft. Why? I remind the court that Microsoft lost this case. Their business practices were found to be illegal. I see no reason that the guilty party should hold a trump card when behavioral remedies are imposed. Correcting Microsoft's behavior is the goal of this PFJ.

The most serious flaw in the PFJ is Section III.J. Section III.J nullifies the entire PFJ by allowing Microsoft to use it as an excuse to reject or refuse any other element by proclaiming a "security compromise." Microsoft has a long and clear record with respect to security, viruses, trojans, and all manner of compromising software. As nearly every Microsoft product has a woeful security reputation, Microsoft can proclaim that every feature of every product has security implications, and reject every PFJ behavior mandate.

Not to mention the enumerated list of exception which Section III.J provides. For example, this e-mail message, if it had been sent using MSN (the Microsoft Network) would have become copyrighted by MSN! A Microsoft product would be allowed, by Section III.J, to do whatever it wanted with that copyrighted material, including witholding its delivery to the court. And no one would ever know.

That's a rather far fetched example, but it illustrates the latitude granted by Section III.J. A future court would never even hear a case against Microsoft because a pre-trial hearing would invoke Section III.J of the agreement and the case would be summarily dismissed.

Again, I remind the court that Microsoft lost this case in court; the decision was upheld upon appeal, and the Supreme Court of the United States found no reason to hear the case. I believe that history shows that Microsoft evades, obfuscates, or simply ignores the law, the courts, and orders from the bench. I believe that this PFJ lacks any incentive for Microsoft to adhere to it, and indeed, offers a mechanism for total ignorance.

I suggest that the court reject the proposed final judgement in its current

form, and that a more robust remedy be found. One that will be less likely to be manipulated and/or ignored by losing defendant Microsoft.

Thank you for your attention,

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